



APR 25 1985

Francis A. Gorman
Vice President & General Manager
Port Authority Trans-Hudson Corporation
One World Trade Center
New York, New York 10048

Re: Duane Marine Salvage Corporation Facility
Perth Amboy, New Jersey
Administrative Order No. II-CERCLA-50102

Dear Mr. Gorman:

This letter will serve as a formal response to a petition of the Port Authority Trans-Hudson Corporation (PATH) for withdrawal of an administrative order issued on December 4, 1984, by the United States Environmental Protection Agency (EPA). In this order, and in subsequent revisions of this order, EPA directed PATH, together with 54 other named respondents, to undertake an immediate removal action to clean up the Duane Marine facility referenced above. Duane Marine is an abandoned hazardous waste disposal facility. The Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA), 42 U.S.C. §9601 et seq., authorizes EPA to issue cleanup orders to parties identified as generators of hazardous substances which were sent to the facility for disposal.

In a letter dated December 19, 1984, and in subsequent telephone conversations and supplemental correspondence, PATH, through its attorney Harry K. Barr, based its petition for withdrawal of the order upon the argument that EPA should exercise its prosecutorial discretion in PATH's favor, just as EPA had exercised its discretion in choosing not to name the New Jersey Department of Environmental Protection (NJDEP) as a party to its orders, even though hazardous waste manifests indicate that NJDEP, like PATH, generated hazardous waste that was sent to the Duane Marine facility.

PATH has argued that EPA ought to treat PATH and NJDEP in exactly the same manner because PATH, like NJDEP, is an agency of the State of New Jersey and, as a matter of comity, PATH ought to receive "all of the privileges and immunities of the sovereign it represents."

EPA is not persuaded by that argument. In the first place, EPA's decision not to name NJDEP was not based on the issue of sovereign immunity, but, instead, was based on the fact that EPA and NJDEP share a common mission and work together on the same problems. Moreover, NJDEP had already expended considerable funds on monitoring, sampling, and analysis of wastes from the Duane Marine site, between 1980 and 1984. Finally, NJDEP at this time contemplates using its resources for ultimate remedial work at the Duane Marine site.

These facts, which all pertain to EPA's and NJDEP's shared mission to handle matters pertaining to hazardous waste in general and the problem at the Duane Marine facility in particular, are the facts upon which EPA's exercise of its prosecutorial discretion was based.

Because none of these facts pertain to PATH's situation, and because notions of comity, sovereign immunity, or of a compact between New York State and the State of New Jersey are not in any way related to EPA's decisions concerning the Duane Marine matter, it should be clear that there is no basis for withdrawing orders as to PATH.

Accordingly, EPA will not grant PATH's request. EPA stands by its original decision to name PATH as a generator respondent, based upon records that indicate that PATH generated hazardous wastes which were sent to the Duane Marine facility for disposal.

Sincerely,

/s/ Christopher J. Daggett

Christopher J. Daggett
Regional Administrator

cc: Harold K. Barr, Esq.
Gerard Burke, NJDEP

bcc: William J. Librizzi, 2ERR
CCO

2ORC-WTS:THOMPSON:4-8067:ry:4/17/85

2ORC-WTS 2ORC-WTS ORC 2ERRD-SICB
THOMPSON HUGDAN BLAZEY FELDSTEIN

2ERRD-SICB
BASSO

2ERRD-SICB
OGG

2ERRD-SICB
LUFTIG

2ERRD RA
LIBRIZZI DAGGETT